

UNITED STATES TAX COURT
WASHINGTON, DC 20217

MILLICENT STEWART,)
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Petitioner,)
)
v.) Docket No. 28216-14 L.
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COMMISSIONER OF INTERNAL REVENUE,)
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Respondent)
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ORDER AND DECISION

This is a collection review action involving the filing of a Federal tax lien in respect of petitioner's outstanding Federal income tax liabilities for 2009 and 2011. I.R.C. secs. 6320(c), 6330(d)(1). Pending before the Court is respondent's Motion For Summary Judgment, together with the supporting Declaration Of Stephen J. McCarrick, both filed March 30, 2015. Petitioner filed a Response on April 23, 2015, objecting to the granting of respondent's motion. Thereafter, on August 19, 2015, the motion was assigned to the undersigned for disposition. On September 8, 2015, the Court ordered the parties to file responses clarifying, inter alia, the effect of petitioner's bankruptcy filing on the lien action. Respondent filed a Response to the Court's Order on October 2, 2015, and petitioner filed a Response to the Court's Order on October 5, 2015.

I. Background

Petitioner stipulated to her 2009 Federal income tax liability (deficiency in income tax plus accuracy-related penalty) through an agreed decision entered at docket number 21637-12S on September 12, 2013, which was assessed on December 9, 2013. Petitioner timely filed her 2011 Federal income tax return, reported no tax, and claimed an overpayment of \$10,036, which was refunded to

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her. Thereafter, on May 6, 2013, respondent assessed a deficiency in tax and accuracy-related penalty for 2011 following an examination of petitioner's return for that year.

In May 2013 petitioner submitted a Form 656, Offer in Compromise, for her 2011 tax liability. The Form 656, which petitioner signed, states at paragraph 1 of Section 8 ("Offer Terms") that "[t]he IRS may file a Notice of Federal Tax Lien to protect the Government's interest on offers that will be paid over time. This tax lien will be released when the payment terms of the accepted offer have been satisfied." Ultimately, after respondent analyzed petitioner's ability to pay, petitioner agreed in March 2014 to increase her offer to payments of \$333.68 per month for 23 months, and respondent accepted the offer in respect of her 2009 and 2011 tax liabilities by letter dated March 28, 2014. The IRS acceptance letter expressly stated that any notice of Federal lien "will be released when the offer amount is paid in full."¹ (The offer letter also expressly advised regarding the set-off of overpayments against petitioner's assessed liabilities and not against her "accepted offer amount.")

On April 15, 2014, respondent sent petitioner a Notice Of Federal Tax Lien Filing And Your Right To A Hearing Under IRC 6320 for 2009 and 2011. See I.R.C. sec. 6320(a). Petitioner then filed a Form 12153, Request For A Collection Due Process Or Equivalent Hearing. See I.R.C. sec. 6320(b). Therein, petitioner did not dispute the underlying liabilities, but argued that the filing of a lien was improper because her offer-in-compromise had previously been accepted and had not been withdrawn or terminated in the interim.

On May 31, 2014, petitioner filed a petition for Chapter 7 bankruptcy. Petitioner received a discharge on September 12, 2014. For petitioner's 2009 liability, respondent assessed the liability within 240 days of petitioner initiating her bankruptcy action, making it a priority claim for tax under 11 U.S.C. section 507(a)(8)(A)(ii) and therefore excepted from discharge under 11 U.S.C. section 523(a)(1)(A). For 2011, petitioner's tax return was due (and filed) within three years of the date petitioner initiated her bankruptcy action, making her 2011 taxes a priority claim under 11 U.S.C. 507(a)(8)(A)(i) and therefore excepted from

¹ Ultimately, after filing for bankruptcy, see infra in the text, petitioner did not fulfill the terms of her offer-in-compromise but rather defaulted.

discharge under 11 U.S.C. 523(a)(1)(A). Accordingly, neither the 2009 nor 2011 underlying liability was discharged in bankruptcy.

On August 26, 2014, the IRS Office of Appeals sent petitioner a letter scheduling an administrative hearing by telephone. In addition, the letter requested that petitioner provide a copy of her offer-in-compromise acceptance letter, which petitioner subsequently did.

The settlement officer conducted a telephonic hearing with petitioner on September 29, 2014. Among other matters discussed, the settlement officer stated that the provisions of the offer-in-compromise allowed for the filing of a notice of federal tax lien as well as the set-off of overpayments from other years' returns. See sec. 6402(a).

The settlement officer also advised, either during the aforementioned telephonic hearing and/or in a subsequent telephone message on October 17, 2014, that petitioner had the option of submitting a so-called offer-on-an-offer if petitioner "wished to have the terms of her current OIC revisited."

By a Notice Of Determination Concerning Collection Action(s) Under Section 6320 and/or 6330 dated October 27, 2014, respondent's Appeals Office sustained the filing of the Federal tax lien for 2009 and 2011. Petitioner then filed a petition commencing the instant case. See I.R.C. secs. 6320(c), 6330(d)(1).

II. Discussion

1. Summary Judgment

Summary judgment serves to "expedite litigation and avoid unnecessary and expensive trials." Florida Peach Corp. v. Commissioner, 90 T.C. 678, 681 (1988). Either party may move for summary judgment upon all or any part of the legal issues in controversy. Rule 121(a). The Court may grant summary judgment only if there are no genuine disputes or issues of material fact. Naftel v. Commissioner, 85 T.C. 527, 529 (1985).

Respondent, as the moving party, bears the burden of proving that no genuine dispute or issue exists as to any material fact and that respondent is entitled to judgment as a matter of law. FPL Group, Inc. v. Commissioner, 115

T.C. 554, 559 (2000); Bond v. Commissioner, 100 T.C. 32, 36 (1993); Naftel v. Commissioner, 85 T.C. at 529. In deciding whether to grant summary judgment, the factual materials and the inferences drawn from them must be considered in the light most favorable to the nonmoving party. FPL Group, Inc. v. Commissioner, 115 T.C. at 559; Bond v. Commissioner, 100 T.C. at 36; Naftel v. Commissioner, 85 T.C. at 529. The party opposing summary judgment must set forth specific facts which show that a question of genuine material fact exists and may not rely merely on allegations or denials in the pleadings. Rule 121(d); Celotex Corp. v. Catrett, 477 U.S. 317, 324 (1986); Grant Creek Water Works, Ltd. v. Commissioner, 91 T.C. 322, 325 (1988); King v. Commissioner, 87 T.C. 1213, 1217 (1986); Shepherd v. Commissioner, T.C. Memo. 1997-555. Where the record viewed as a whole could not lead a reasonable trier of fact to find for the nonmoving party, there is no “genuine issue for trial”. Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574, 587 (1986).

2. Hearings Under Section 6320

Section 6321 imposes a lien in favor of the United States upon all property and rights to property of a taxpayer where there exists a failure to pay any tax liability after demand for payment. The lien generally arises at the time assessment is made. Sec. 6322. Section 6323, however, provides that such lien shall not be valid against any purchaser, holder of a security interest, mechanic’s lienor, or judgment lien creditor until the Secretary files a notice of lien with the appropriate public officials. Section 6320 then sets forth procedures applicable to afford protections for taxpayers in lien situations.

a. Underlying Tax Liabilities and Spousal Defenses

Throughout the instant administrative and judicial proceedings, petitioner has at no time sought to challenge her underlying tax liability for 2009 or 2011. See I.R.C. sec. 6330(c)(2)(B); Aguirre v. Commissioner, 117 T.C. 324, 327 (2001). Thus, the underlying liabilities for those years are not at issue here.

Similarly, petitioner has not at any time during the instant administrative and judicial process raised a spousal defense. (Notably, for 2009 petitioner’s spouse sought, and was granted, innocent spouse relief.) Thus, the Court does not consider that issue here. See Giamelli v. Commissioner, 129 T.C. 107, 114-115 (2007); Magana v. Commissioner, 118 T.C. 488, 493 (2002).

b. Challenges to the Appropriateness of Collection Actions and Collection Alternatives

Petitioner has argued for the withdrawal of the notice of lien because respondent previously accepted her offer-in-compromise.

Regarding withdrawal of a notice of lien, I.R.C. section 6323(j)(1) provides as follows:

The Secretary may withdraw a notice of a lien filed under this section and this chapter shall be applied as if the withdrawn notice had not been filed, if the Secretary determines that--

(A) the filing of such notice was premature or otherwise not in accordance with administrative procedures of the Secretary,

(B) the taxpayer has entered into an agreement under section 6159 to satisfy the tax liability for which the lien was imposed by means of installment payments, unless such agreement provides otherwise,

(C) the withdrawal of such notice will facilitate the collection of the tax liability, or

(D) with the consent of the taxpayer or the National Taxpayer Advocate, the withdrawal of such notice would be in the best interests of the taxpayer (as determined by the National Taxpayer Advocate) and the United States.

[Emphasis added.]

Notably, these standards are discretionary (i.e., “may”) rather than mandatory. The settlement officer here determined that the notice of lien would serve properly to protect the Government’s interests vis-a-vis other potential creditors. See also Kyereme v. Commissioner, T.C. Memo. 2012-174. In short, the Appeals Office’s decision not to withdraw the notice of Federal tax lien does not represent an abuse of discretion in this case.

A lien is a security device that assures the Government of its priority over other possible creditors. Elliott, Federal Tax Collections, Liens, and Levies, par.

9.05 (2d ed. 2005). Unlike a levy, a lien does not deprive a taxpayer of property. Id.; see also United States v. Whiting Pools, Inc., 462 U.S. 198, 210-211 (1983).

An offer-in-compromise is a form of collection alternative. Section 7122(a) authorizes the Commissioner to compromise any civil or criminal case arising under the internal revenue laws. See also sec. 301.7122-1(c)(1), Proced. & Admin. Regs. On the Form 656, Offer In Compromise, which petitioner signed, subsection 1 of Section 8 (“Offer Terms”) states, inter alia, that “[t]he IRS may file a Notice of Federal Tax Lien to protect the Government’s interest on offers that will be paid over time. This tax lien will be released when the payment terms of the offer have been satisfied.” Petitioner was advised similarly in the IRS letter accepting her offer-in-compromise. Therefore, petitioner was on notice that respondent might file a notice of Federal tax lien that would remain in effect throughout the payment period.

Petitioner argues that respondent did not explain what the offer entailed and that she understood the terms to mean that a lien would only be filed if she defaulted on the offer-in-compromise. Although it is regrettable that petitioner misunderstood the Form 656, she has not shown that the settlement officer abused his discretion or otherwise contravened the express terms of the offer-in-compromise that petitioner signed. Moreover, the terms on the Form 656 were necessary for petitioner’s offer to be accepted; indeed, if her offer had not included the terms, then the offer would not have been a valid. See Schropp v. Commissioner, T.C. Memo. 2010-71, aff’d per curiam, 405 Fed. Appx. 800 (4th Cir. 2010), wherein this Court stated (at *9) that if the taxpayer’s offer-in-compromise “had not included the prescribed terms [regarding the Commissioner’s right to file a notice of Federal tax lien in order to protect the Government’s interest on a deferred payment offer], then it would not have been a valid OIC” and that “a notice of lien may properly be filed while an OIC is under consideration or after it is accepted.” See Baltic v. Commissioner, 129 T.C. 178, 180 n.4 (2007); Taggart v. Commissioner, T.C. Memo. 2013-113, at *6; see also Green v. Commissioner, T.C. Memo. 2014-180.

In sum, the record fails to show any abuse of discretion by the settlement officer or the IRS Office of Appeals in sustaining the filing of the Federal tax lien.

c. Verification of Procedures

It is well settled that no particular form of verification is required; that no particular document need be provided to taxpayers at a hearing conducted under section 6330; and that Forms 4340, Certificate of Assessments, Payments, and Other Specified Matters, and transcripts of account may be used to satisfy the requirements of section 6330(c)(1). Roberts v. Commissioner, 118 T.C. 365, 371 n.10 (2002), aff'd, 329 F.3d 1224 (11th Cir. 2003); Nestor v. Commissioner, 118 T.C. 162, 166 (2002); Lunsford v. Commissioner, 117 T.C. 183 (2001). The transcripts and materials that are attached as exhibits to respondent's motion for summary judgment and accompanying declaration, along with the statements of the officer in the notice of determination, show that required assessment and collection procedures were followed.

III. Conclusion

Drawing all factual inferences against respondent, the Court concludes that there are no genuine issues of material fact in this case and that respondent is entitled to judgment as a matter of law.

Finally, in reaching the conclusions described herein, the Court has considered all of the arguments made by petitioner and, to the extent not specifically mentioned above, finds those arguments to be moot, irrelevant, or without merit.

Premises considered, it is

ORDERED that respondent's Motion Of Summary Judgment, dated March 30, 2015, is granted. It is further

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ORDERED AND DECIDED that respondent may proceed with the collection action (lien filing) in respect of petitioner's outstanding income tax-related liabilities for the taxable (calendar) years 2009 and 2011 as determined in the notice of determination dated October 27, 2014, upon which notice this case is based.

(Signed) Robert N. Armen, Jr.
Special Trial Judge

Entered: **OCT 27 2015**